

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

MATTHEW TORNQUIST, Petitioner, vs. STATE OF SOUTH DAKOTA, KELLIE WASKO, SECRETARY OF CORRECTIONS; TERESA BITTINGER, WARDEN OF SDSP; AND SD ATTORNEY GENERAL'S OFFICE, Respondents.	4:23-CV-04196-ECS OPINION AND ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING HABEAS CORPUS PETITION
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Magistrate Judge Veronica L. Duffy, in her Report and Recommendation, Doc. 8, recommended dismissing Matthew Tornquist's habeas corpus petition under 28 U.S.C. § 2254, Doc. 1. Judge Duffy screened Tornquist's petition and determined it must be dismissed. Doc. 8. She determined Tornquist's petition was a "second or successive" petition that this Court does not have subject matter jurisdiction over unless Tornquist gets permission from the Eighth Circuit Court of Appeals. Id.

Tornquist objects to the Report and Recommendation claiming he obtained permission to file a second petition. Doc. 9. Tornquist though mistakenly believes Judge Duffy is an Eighth Circuit Judge and permitted him to file a second petition. Docs. 9, 9-1. Judge Duffy, however, is a United States Magistrate Judge—not a court of appeals judge—and her text orders that Tornquist cites were not intended to allow him to file another petition about conduct prior to his original petition. See Burton v. Stewart, 549 U.S. 147, 153 (2007) (Only "[a] three-judge panel

of the court of appeals may authorize the filing of the second or successive [petition].” (citations omitted)).

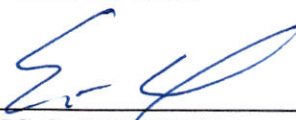
Ultimately, Tornquist has not obtained an order from the Eighth Circuit “authorizing [this] court to consider [Tornquist’s] application.” 28 U.S.C. § 2244(b)(3); see also Burton, 549 U.S. at 157 (“[Tornquist] neither sought nor received authorization from the Court of Appeals before filing [this] petition, a ‘second or successive’ petition challenging his custody, and so [this] Court [is] without jurisdiction to entertain it.”). Accordingly, the Court overrules Tornquist’s objections, Doc. 9, and adopts the Report and Recommendation, Doc. 8. Thus, Tornquist’s § 2254 habeas petition, Doc. 1, must be dismissed and his various motions, Docs. 2–6, 10, must be denied.

I. Order

For the above reasons, and the record as it now exists before this Court, it is ORDERED that the Report and Recommendation, Doc. 8, is adopted. It is further ORDERED that Petitioner’s objections, Doc. 9, are overruled. It is further ORDERED that Petitioner’s habeas corpus petition under 28 U.S.C. § 2254, Doc. 1, is dismissed because this Court lacks subject matter jurisdiction over it. It is further ORDERED that Petitioner’s motions, Docs. 2–6, 10, are denied because this Court lacks subject matter jurisdiction over the habeas petition.

DATED this 4th day of October, 2024.

BY THE COURT:



ERIC C. SCHULTE
UNITED STATES DISTRICT JUDGE